IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

No. 442 of 2003, decided on 21/8/03

Maha Laxmi Sugar Mill

Vs.

Deputy Labour Commissioner

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 21/8/03

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Writ Petition No. 442 (M/S) of 2002

The Mahalaxmi Sugar Milla and another---- Petitioner

Versus

Deputy Labour Commissioner and others Respondents

Hon'ble M.M. Ghildiyal J.

By means of this writ petition the petitioners have challenged the order dated 07.06.2002 passed by Deputy Labour Commissioner Dehradun exercising jurisdiction under section 3 of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 (U.P. Act no. 5 of 1978) and recovery certificate dated 7.6.2002 issued in pursuance thereof.

Heard Sri Ravi Kiran Jain and Sri Naveneet Kaushil learned counsel for the petitioners, Sri M.C.Pant learned counsel for respondent no.5 and learned Standing Counsel.

The case of the petitioners is that the petitioner no.1 is a company duly constituted under the Companies Act, 1856. The petitioner no.2 is the Managing Director of the company. The company is engaged in production of sugar and allied products and is a factory within the meaning of Factories Act. There are four registered and recognized labour unions in the factory. Respondent no.4 (Iqbalpur Sugar Works Union) is one of them.

The crushing season for the year 2001-2002 started on 05.11.2001 and came to an end in the month of May 2002. Before the crushing period started in the meeting with the employees respondent no.5 raised certain illegal demands which were not possible for the management and the management categorically denied to accept the demands as the same were not in the interest of the factory. The respondent no.5 threatened the management of dire consequences. The denial by the management resulted to an unfortunate incident which took place on 4.11.2001 in the Mill premises. Respondent no.5 indulged alongwith local Gundas in arson and mischief within the mill premises. They damaged the property of the Mills and set at fire the computer centre of the Mills. Consequently a FIR was lodged at P.S.Jhabrera on 4.11.2001 under sections 147,148,323,504, 436 and 438 IPC. The main accused was respondent no 5 who till filing of writ petition was absconding.

The management dismissed the services of respondent no.5 Dharamveer Singh with effect from 5.11.2001 which annoyed the respondent no.5 Sri Dharamveer and he started inducing the labourers to go on strike. The management did not refuse any of the workmen from work. However, some of them abstained from joining stating that they will work only under the leadership of Sri Dharamveer respondent no.5 only. Respondent no.5 filed complaint before the Labour Enforcement Officer Roorkee district Haridwar and on the complaint the Labour Enforcement Officer Roorkee initiated proceedings of sending notices under section 4 of U.P. Industrial Disputes Rules 1957 calling upon the petitioner company for conciliation and took the help of district administration to resolve the dispute raised by respondent no.5. The notice states that the company has not called a number of seasonal/ permanent workers to work in the Mills for the crushing season 2001-2002. The petitioner company even had gone to attend meeting before the Sub Divisional Magistrate on 3.12.2001 and had entered one sided written agreement with the workers to the effect that the workmen who want to return back to work can come and join their duties peacefully. The agreement was signed by the General Manager, P & A on behalf of the petitioner company and was submitted to the Labour Enforcement Officer, Roorkee in the hope that the workers will return back to the work but since the FIR lodged against respondent no.5 was not withdrawn by the petitioner company the workers on the initiation of respondent no.5 did not return back to work.

Since the Mill was in dire need of workers as the crushing season was at its peak hence the management put notices inviting the workmen time and again to come and join their duties in a peaceful manner. Ultimately some of the workers returned and joined their duties but few workers had chosen not to join their duties and were stick to their demand first to withdraw the FIR lodged against respondent no.5. The respondent no.5 by undue pressure on the labour authorities moved an application stating that 300 workers have not been taken by the petitioner company and therefore, this application under section 3 of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 for recovery of wages is being moved.

On this application the Deputy Labour Commissioner passed an order rejecting the application stating therein that Uttar Pradesh Industrial Peace

(Timely Payment of Wages) Act, 1978 can only invoked for non-disputed amount for which the employee has worked and if there is any dispute then first the dispute has to be settled by a competent authority and the provisions of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 cannot be invoked in these conditions. After passing of this order the respondent no.1 remanded the case for conciliation and did not take any action under Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978. The order rejecting the application has been filed as annexure 5 to the writ petition.

Respondent no.5 moved another application on 25.2.2002 before the Deputy Labour Commissioner in respect of 162 workers under section 3 of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 for recovery of their salaries on which the respondent no.1 issued show cause notice dated 5.3.2002 calling upon the petitioner as to why the wages of the employees may not be recovered from the petitioner company.

In the mean time the petitioner company filed writ petition no.112 of 2002 and this court on 23.3.2002 passed an order directing the respondents not to proceed against the recovery of amount till disposal of objections filed by the petitioner company. With these directions the writ petition was finally disposed of. The petitioner company filed detailed objections stating therein that the list of employees supplied alongwith application was defective as number of workers shown in the list do not belong to seasonal/permanent category, number of workers shown in the list have resumed their duties. The employees shown in the list have actually not worked during the crushing season and some of them willfully abstained themselves from duties and as such are not governed by the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978. in the objection it was pleaded that the Act is applicable only when the workman has worked and has not been paid his wages. Further the Act is applicable in case of default in making payment of all workers and not in case of few workers. The incharge Deputy Labour Commissioner by order dated 7.6.2002 passed an order and directed for recovery of Rs. 20,97,366.00 from the petitioner company for payment under the Act.

Standing orders governing the conditions of the employees of workmen in vacuum pan sugar factories of the State were enforced under government notification dated 13.10.1958. Clause 5 of the standing orders defines "season" means the period commencing from the date when the crushing commenced till the date when crushing ends. Clause (5) classifies the workmen into various categories such as, permanent, seasonal, temporary, probationary, apprentices and substitutes. A "seasonal workman" as per standing orders is one who is engaged only for the crushing season and has completed his probationary period, if any, probationer has been defined in standing orders. As per standing orders a "Probationer" is one who is provisionally employed for a period specified by the management at the time of employment to fill in permanent/seasonal vacancy or a new post of permanent/seasonal nature and who may be confirmed at the completion of that period, if his services are found satisfactory. The probationary period shall be six months in the case of permanent workman and one month or half of the season whichever is less in the case of seasonal workmen.

Provided that if no period of probation is specified by the management at the time of employment, the period of probation shall be deemed to be six months in the case of permanent workmen and one month or half of the season which ever is less, in the case of seasonal workmen.

Provided further that if after the expiry of probationary period, no orders are passed by the management the probationers shall be deemed to have been confirmed automatically.

It is also provided under the standing orders that the Manager shall intimate in writing the date of commencement of the crushing season of a factory to the Labour Commissioner, the Regional Addl./Deputy Labour Commissioner/Conciliation Officer of the area and to all registered trade unions of its workmen and shall also publish the date in a local newspaper. A copy of the general notice shall be displayed on the Notice Board. Intimation shall also be given by the management to each individual workmen by registered post at least ten days in advance informing him of the date on which he has to report for duty. Such intimation may be sent through a messenger to such workmen who are available locally and an acknowledgement obtained from them in the peon book. In case the

workman does not report for duty within ten days of the date notified to him, he shall lose his lien on the employment.

The submission of the learned counsel for the petitioner is that he has filed a detailed objection before the Deputy Labour Commissioner wherein he has submitted that the list provided alongwith the show cause notice includes the names of some of the employees who have already joined after the notice given by the company to the workers to join the duties. Some of the workmen who are purely temporary have also been included in the list. They have no lien in the factory and the provisions of Uttar Pradesh Industrial peace (Timely Payment of Wages) Act, 1978 cannot be invoked in their case. It was further stated in the objection that time and again notices were issued by the petitioner company to the workers to join duties. However, they themselves abstained from joining and were adamant to joint their duties only after the FIR lodged against Sri Dharamveer respondent no.5 in withdrawn by the petitioner. It was further pleaded that provisions of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 can be invoked only when a workman has worked and for which the wage has not been paid by the establishment. There were as many as five unions of workers and workman of four unions have joined duties and were being paid wages. It was a case of few workmen of one union who willfully did not join duties on the instigation of respondent no.5 Dharamveer against whom a FIR was lodged by the petitioner company.

Various affidavits of different workmen were filed before the Deputy Labour Commissioner. The said affidavits are also the part of the writ petition in which the workmen have submitted that they wanted to work in the Mill but they were restrained by the respondent no.5 Dharamveer and also threatened by respondent no.5. However, they have joined their duties. It is also stated in the affidavit that in the month of December 2001 the conciliation officer called both the parties and the parties were agreed to permit as many as 180 seasonal workmen to work in the factory. The agreement was also signed by the petitioner company. However, respondent no.5 and his associate workmen left the meeting without signing the agreement. It is also stated in the affidavit that the labour enforcement officer also restrained the employees from joining their duties and asked the workmen to cooperate with the union leaders and assured them that so far as

payment of wages is concerned they will get their wages even without doing any work. It is very strange that the authorities who have been assigned duties for conciliation have taken such a step which is neither in the interest of workmen nor in the interest of industry. A number of affidavits have been filed by different workmen before the Deputy Labour Commissioner and those affidavits are also part of writ petition making the same allegations against respondent no.5 as well as the labour/enforcement officer.

Statements of various persons were recorded prior to the passing of the impugned order by the respondent which includes the statements of labour Enforcement Officer. At one stage he has admitted that about 42 workmen have joined duties. He has further admitted that the petitioner company had signed an agreement by which they were agreed to permit the workmen to join the factory. In his statement he has submitted that the union has supplied a list of 295 workers to him which he has sent to the petitioner company for verification.

Statement of respondent no.5 was also recorded. In his statement the respondent no.5 has admitted that there are about 900 workers in the mill and the petitioner company has not permitted about 162 seasonal workers. In his statement he has submitted that he is not aware why the other four unions are not supporting him. Thus, it is clear that there are about 900 workers in the factory. According to the respondents as many as 162 seasonal workers are not being permitted by the factory to join duties.

On the contrary the contention of the learned counsel for the petitioner is that all the workers who were entitled to join duties were permitted and more than 750 workers are working in the factory. Some of the persons willfully did not join duties as they were adamant that they will join after the FIR lodged against Dharamveer is withdrawn by the petitioner company which is not possible in the interest of the petitioner company.

The learned counsel for the petitioner has submitted that the impugned order and recovery certificate in respect of 162 workers is bad and is not sustainable at it contains a list of 162 workers who as per the record of the company belong to the category of temporary workers. As per the standing orders and to whom the company has no obligation to provide work during the crushing season. In the supplementary affidavit the petitioner has mentioned the names of such persons. Further the impugned order has also

been challenged on the ground that the said order has been passed on the application of respondent no.5 who has already been dismissed by the Management because of his nefarious activities and his involvement in criminal acts against the petitioner company and was absconding even at the time when the application alongwith affidavit was moved by him. The petitioner company has already deposited the amount as required under recovery certificate. However, the disbursement of said amount amongst the workers has been stayed by his court till the pronouncement of the judgment.

Learned Standing Counsel has filed counter affidavit. He has submitted that the standing orders clearly provide that all seasonal workmen shall have a right to be taken in employment during the crushing season. Since the petitioner company has not permitted 162 seasonal workers to join in the crushing season for this reason the proceedings were initiated under Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 and the order passed thereon is absolutely correct. Prior to passing of impugned order show cause notice was issued to the petitioner and after hearing both the parties at length and after affording opportunity to the petitioner it was found that the petitioner was in default of wage bill amount of Rs .20, 97,366.00 and the respondent no.2 being competent to issue such certificate has passed the order and also issued certificate to the Collector, Haridwar to recover the said amount from the petitioner as arrears of land revenue. He has further submitted that the reconciliation proceedings were started. However, the matter could not be resolved due to non-cooperation of management. Learned Standing Counsel has further submitted that a list of 295 seasonal workers was given by the labour union stating that they have been refused duty by the petitioner for the crushing season 2001-2002. The said list was passed on to the management for objection and during the course of conciliation proceedings the management was agreed that out of these 295 workmen only 180 were seasonal workmen. The management was agreed to provide them work. However, later on the management refused to permit them to join and the respondents were compelled to take action under the Act after giving full opportunity to the parties concerned.

Respondent no.5 has also filed affidavit indicating therein the settlement dated 24.11.2001 which is the basis of the claim of the respondent

union. Sri M.C. Pant learned counsel for respondent no.5 has submitted that the petitioner company did not comply various clauses of standing orders which were mandatory. The workmen were not informed by the petitioners in writing about the crushing season which is mandatory. He has further pleaded that since the seasonal workers had completed probational period were not informed about the crushing season which amounts to refusal to permit; them to work and in the circumstances the Deputy Labour Commissioner has rightly passed the order of recovery.

Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 was enacted to provide in the interest of maintenance of industrial peace for timely payment of wages in industrial establishments and for matters connected therewith. The object and reasons for enactment of the Act has been given in prefatory note that the payment of wages of workman leads to simmering discontent amongst them. Some times a threat to law and order is also paused on this account. The provisions of Payment of Wages Act, 1936 have been found to be inadequate to insure timely payment of wages. The incidences of disturbance of industry peace being greater in comparative bigger establishment, it was considered necessary to provide that if the wage bill in default exceeds Rs. 50,000.00 the amount should be recovered as arrears of land revenue. Further in order to curve the tendency of the employer to keep the amounts of wages in arrears, it was also considered necessary to make it a penalized offence to be in default of a wage bill exceeding rupee on lac. Section 3 of the aforesaid Act provides for recovery of wages in certain industrial establishments as arrears of land revenue.

Section 3 of the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 is quoted hereunder.

> **"Recovery of wages in certain industrial establishments as arrear of land revenue.__(1)** where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wage-bill in respect of which such occupier is in default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned.

(2) Upon receipt of the certificate referred to in sub-section(1), the Collector shall proceed to realize, from the industrial establishment, the amount specified therein, besides recovery charges at the rate of ten per cent, as if such amount were an arrears of land revenue.

(3) The amount realized under sub-section (2) shall, after deducting the recovery charges, be placed at the disposal of the Labour Commissioner who shall disburse the same or cause it to be disbursed among the workmen entitled thereto.

(4) Where the amount so realized falls short of the wage-bill in respect of which the occupier has been in default, the Labour Commissioner may arrange for disbursement of such proportion or respect proportions of the wages due to various categories of workmen as he may think fit.

(5) The liability of the occupier towards each workman in respect of payment of wages, shall, to the extent of the amount paid to such workman under this section stand discharged."

Under section 4 the Labour Commissioner has been given the power in respect of enforcing the attendance of witnesses and examining them on oath compelling production of documents. Section 5 of the act relates to penalty.

Learned counsel for the petitioners has placed reliance on the judgment of Bank of Baroda Vs. T.S.Kelawala and others reported in 1990 (4) S.C.,C. 744. In the aforesaid case the Apex Court has held that wages are paid for actual work. Mere physical presence or attendances is not enough in case of deliberate refusal to work in the circumstances deduction of wages is justified. though the facts of case cited above are quite different to the present case. Yet the principle laid down by the Apex Court in the aforesaid judgment that it is for the work done by the worker and not for only attendance the wages/salary is paid is fully paid.

In the present case it is not disputed that the dispute between the management and the workers was in respect of the fact whether the management had called the workers who were entitled to be invited in pursuance to the standing orders or not. It is not the case of either party that the workers have worked actually and they were not paid salary.

The learned counsel for the petitioner has further placed reliance on the judgment of **Modi Industries Limited Vs. State of U.P. Reported in A.I.R. 1994 S.C. Page 536.** In the aforesaid case there was a dispute between the management and trade union leaders which resulted lodging of two cross FIRs. The plea of union was that they had reported to duties but the production could not be carried on as the company had suspended 30 workmen who were technicians and in their absence it was not possible to operate the machines. There was an agreement between the management and the workers that except suspended workmen the others will join duties. However, the work could not be carried on. The Union pleaded that the management was not permitting the workmen to work whereas the plea of the management was that it was due to non-cooperation of workmen. The work could be started after some time. However, the management did not pay wages to the workmen for the period there was no work. The Additional Commissioner issued notices under section 3 of Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 and after hearing both the parties issued recovery certificate. The recovery certificate was challenged before the High Court and the High Court dismissed the writ petition against which the company approached the Hon'ble Supreme Court and the Apex Court while dealing with almost similar facts of the present case has held as under:-

> "It will be thus clear from the preamble " The statement of objects and reasons and the provisions of the act that firstly the act has been placed on the bigger establishments. The incidence of disturbance of Industrial peace being greater in such establishments on account of the default in payment of wages. Secondly the act deals with defaults in payment of the wages bill of all the workman in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of payments of wages act, 1936 which provisions are found in adequate to ensure timely payment of wages of the whole complement of workmen in an establishment. Thirdly, it is not in respect of the default in payment of every wage bill but only of a wage bill exceeding Rs.50000/- That the Labour Commissioner can be approached under the act for redressal of the grievance. Fourthly, The

act is not applicable to all establishments but only those establishments, which produce ,process, Adopt or manufacture some articles. It will therefore be evident that the Act does not supplant or substitute the payment of Wages Act, 1936 but supplements the said Act in the limited area, viz, where the establishment as stated above (1) Products ,processes, adopt or manufactures some articles (2) where there is a default in the wage-bill of the entire such establishment and (3) where such wage bill exceeds Rs. 50,000.00 the object of the Act as stated above is not so much to secure payment of wages to individual workman but to prevent industrial unrest and disbursement of industrial peace on account of the default on the part of the establishment in payment of wages to their work force as a whole.

The Apex Court has further held that the inquiry under section 3 being thus limited in its scope, the Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and are, therefore, entitled to their wages, are not paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs. 50,000/- It is only if he is satisfied on both counts that he can issue the certificate in question.

Thus, it is clear from the aforesaid paragraph that before issuing certificate of recovery the Labour Commissioner should satisfy himself that the workmen, though they have worked and are, therefore, entitled to their wages are not paid the same within time and further that the arrears of wages so due exceeds Rs. 50 000/-. In the present case it is not the finding of the Labour Commissioner that the workmen have worked and are, therefore, entitled to their wages which has not been paid to them within time and in the circumstances issuance of as such the recovery certificate is bad in law.

In paragraph no.4 of the aforesaid judgment the Apex Court has held as under:-

"On the facts of the present case, we are more than satisfied that there did exist a genuine dispute between the parties as to whose acts of omission or commission were responsible for the halting of the production in the

factory for the period in question. This was put into issue before the Labour Commissioner by the appellant-company. The Labour Commissioner, in the circumstances, could not have proceeded to issue the certificate. He ought to have referred the parties to industrial adjudication which was the proper forum for the purpose. Under the circumstances, we set aside the impugned certificate dated April 29, 1991 issued by the Labour Commissioner."

In the present case too from the facts it appears that there exists a genuine dispute between the parties as to whose acts of omission or commission were responsible from restraining some of the workmen to join their duties. The issue can only be adjudicated by the Labour Commissioner which is a proper forum for the purpose.

The provisions of the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 can be invoked where there is a default in the wage-bill of the entire such establishment. The object of the Act is not so much to secure payment of wages of individual workmen but on account of default on the part of the establishment in making payment to their workforce as a whole. It is not disputed that in the present case more than 750 workers were getting their wages andeven accepting the plea of respondents it was a case of few workers that they were not invited to join their duties.

The Apex Court in the circumstances directed the respondent-State to refer the dispute between the parties with regard to entitlement of the workmen to receive the wages and the liability of the appellant company to pay the same for the disputed period for adjudication to appropriate authority under the U.P. Industrial Disputes Act, 1947. The facts of the present case are similar to the facts of Modi Industries Limited Vs. State of U.P. (supra).

For the reasons recorded above the writ petition is allowed. The order dated 07.06.2002 passed by Deputy Labour Commissioner, Dehradun and recovery certificate dated 7.6.2002 issued in pursuance thereof are set aside. The State of Uttaranchal is directed to refer the dispute between the parties with regard to the entitlement of the workmen to receive the wages for adjudication to the appropriate authority.

August 21, 2003 **(M.M. Ghildiyal, J.)**

MPS